STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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July 23, 1997

Mr.

Dear Mr. Sullivan:

This is in response to your letter of July 2, 1997 in which you request an opinion on the application of the two-year time limit for hearing an application for change in assessment (assessment appeal) as provided by Section 1604 of the Revenue and Taxation Code. You state that the assessment appeals board has failed to hear within two years a timely filed application for the 1994 assessment of the property owned by S Company (S) and, therefore, pursuant to subdivision (c) of section 1604, the opinion of market value on the application must be enrolled as the assessment for that year.

For the reasons stated hereinafter, it is our opinion that the waiver was properly required by the assessment appeals board, and the two year statute of limitations is not applicable to your appeal.

I have reviewed the documents accompanying your letter which mostly reflect the events listed chronologically in the memorandum from M. dated March 18, 1997. I have also spoken with Ms. Jan Martin, counsel to the Orange County Assessment Appeals Boards, who has provided me with information concerning the processing of the application and the scheduling of a hearing. To summarize what I understand to be the relevant facts:

1. S , through its tax representative R Services, (R), timely filed an application for changed assessment to appeal the 1994 assessment of its real property.

2. The application includes a block for agent authorization which, if the applicant is a corporation, must be signed by an officer of the corporation. On S application the authorization

signature appeared as "P , AGENT", who was not an officer of S , but rather, was an agent of S

3. By letter dated April 12, 1995, the appeals board notified S that the authorization of agency had been improperly signed by an agent rather than a corporate officer and requested a properly executed authorization within fourteen days.

4. Approximately one year and four months later in August 1996, R filed with the appeals board a revised application with a corporate officer's authorization and included a request that the board schedule a hearing date on the application. Subsequently, M sent to the appeals board additional copies of the revised application with a request for hearing and left voicemail messages for appeals board personnel.

5. Sharon Smith, manager of the Orange County Assessment Appeals Division, in a letter dated February 19, 1997 followed up on a previous communication of January 15, 1997 concerning the scheduling of a hearing to reopen S appeal. Ms. Smith indicated that in order to grant a hearing it was necessary that you submit an unconditional waiver of the two-year time limitation provisions by March 10, 1997.

6. You submitted an executed unconditional waiver dated March 21, 1997, and a notice of hearing also dated March 21 notified you that your application for reduced assessment was scheduled for hearing on May 6, 1997. A subsequent letter from Sharon Smith dated April 7, 1997 corrects the March 21 notice of hearing by stating that the May 6 hearing would decide only the issue of reopening the appeal application. The appeals board hearing results noted the disposition as "Late Filing Accepted".

In a letter to Darlene Bloom, clerk of the appeals board, dated June 12, 1997 you dispute the appeal board's finding because you claim the application was filed timely, the assessor's office but not the clerk of the board determined that the application was untimely, and you never received notice from the appeals board that the application was untimely. Based on these events you believe that the original application was validly filed, was not heard and decided by an appeals board within two years of filing and, therefore, the opinion of value stated in the application should be enrolled. Alternatively, you would be willing to stipulate to a reduction in value with the assessor. You request an opinion setting forth "[our] understanding of the tax code pertaining to a taxpayer's right to a timely hearing, as it pertains to the information provided." And, in more specific terms, you ask: "[C]an any board extend a hearing beyond the two year time frame, for any reason if no waiver has been executed and no notice of denial was sent to the taxpayer?"

It is our view that the original application was timely filed though incomplete because it lacked an authorized signature of a corporate officer. Pursuant to Property Tax Rule 305 an incomplete application is invalid and the application shall not be accepted by the appeals board and, pursuant to Rule 309, the two-year time period shall not apply if the application is not timely and complete. However, an applicant shall not be denied a timely hearing for failure to file a

timely and complete application unless the appeals board within two years of filing notifies the applicant in writing of such denial.

In this case, rather than deny hearing, the appeals board mailed notice of the defective authorization and gave the applicant an opportunity to correct it. In our view, the letter of April 12, 1995 requesting the agent authorization served as adequate notice that the application would be considered invalid and would not be heard until such authorization was submitted. Due to the ensuing sixteen month delay, the appeals board received the authorization only about one month before the expiration of the two-year period and, therefore, in our view, the appeals board acted properly by requiring a waiver before reopening the appeal application. Alternatively, the appeal application would have remained closed. Furthermore, the waiver is valid even though it was executed after the two-year period had run.

Law and Analysis

Incomplete Application and Notice to Applicant

Section 1603 of the Revenue and Taxation Code provides in pertinent part that "(a) A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application . . . The form for the application shall be prescribed by the State Board of Equalization." The State Board of Equalization promulgated Property Tax Rule 305 to explicate the application filing procedures of section 1603. With regard to agent authorization, Rule 305 provides, in pertinent part, that "No change in assessment sought by a person affected shall be made unless the following application procedure is followed: (a) The application is made by a person affected or his agent. . . . If the applicant is a corporation, the authorization must be signed by an officer of the corporation."

The agent authorization on S. 's application was signed by P , who was not an officer of Safeco, and the application was incomplete for that reason. As a result, the appeals board declined to schedule a hearing because an applicant is not entitled to a hearing unless the specified procedures are followed, including, in the case of an applicant corporation, an agent authorization signed by a corporate officer.

After reviewing the application for adequacy, the appeals board, by letter dated April 12, 1995 notified S through its agent R that the application was incomplete and requested proper authorization. The letter requested that correction be made within fourteen days and advised that failure to do so would result in an invalid appeal. Although neither the statutes nor the rules explicitly allow amendment of a timely filed application after the close of the filing period, the court of appeal has held that subdivision (e) of Rule 305 implies that amendment is permissible provided the amendment does not request relief different from or additional to the relief originally requested. *Midstate Theatres, Inc. v. Board of Supervisors* (1975) 46 Cal.App.3d 204. In August 1995, approximately four months after notification, the appeals board determined

that R had been allowed a reasonable period of time to amend and, having received no response, closed the application.

Two-Year Limitations Period for Hearing and Deciding an Application

Section 1604(c) requires that an application for reduced assessment must be heard within two years of filing and provides in relevant part

> "If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application . . ."

Property Tax Rule 309 interprets section 1604, and subdivision (c) of that rule sets forth exceptions to the requirement that an application must be heard within two years or the applicant's opinion must be enrolled. Among those exceptions, subdivision (c) clearly states that the two-year provision does not apply if "the applicant has not filed a timely and complete application". However, subdivision (d) of Rule 309 further states that an applicant shall not be denied a timely hearing and determination within two years for, among the other exceptions, the failure to file a timely and complete application, "unless, within two years of the date of the application, the Board gives the applicant a written notice of denial."

In this case, a timely but incomplete application was filed on September 15, 1994 but instead of denying a hearing, the appeals board notified the applicant that the application was incomplete and the reason therefor. The letter informed the applicant that it had fourteen days to submit the proper authorization and further advised that failure to do so would result in an invalid application. Thus, the letter served as notice that the appeals board would not schedule a hearing until the application was complete. Nonetheless, the agent authorization and a request for hearing was not received until sixteen months later in August 1996, about one month before the expiration of the two-year period.

Under the circumstances, it is our view that it was proper for the appeals board to request the waiver as a condition of hearing the application. Upon determining that the application was incomplete, the appeals board promptly mailed notice of the defect, gave the applicant an opportunity to correct it and further advised that if not corrected the application would be invalid. Until the application was complete the appeals board was unable to schedule a hearing and by the time the authorization was received in August 1996 it was practically impossible for the appeals board to schedule a hearing the following month in order to fall within the two-year period. Thus, the sixteen-month delay caused by the applicant left the appeals board with the option of requiring a waiver of the two-year period before reopening the appeal application or continuing to regard the appeal application as closed.

With regard to the validity of the waiver, no statute or rule prohibits a waiver agreement more than two years after an application has been filed. Subdivision (c)(1) of section 1604 simply requires that "the taxpayer and the county assessment appeals board mutually agree in writing, or on the record, to an extension of time for the hearing." In almost identical language, Rule 309 is to same effect. Thus, the waiver validly executed by the applicant's agent is sufficient to waive the two-year hearing requirement.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

Lou Ambrose
Tax Counsel

LA:ba
cc: Ms. Jan Martin, Deputy County Counsel, Orange County
Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:70

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